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*in Opinion*

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CONCORD, N.H.

Frank D. Merrill, Commissioner  
Department of Public Works and Highways  
State House Annex  
Concord, New Hampshire

Re: Dam - Lempster

Dear Mr. Merrill:

I have your inquiry of August 23, 1955 as to whether the state may look to Mr. Rowe for payment of damages to a large box culvert occasioned by collapse of Rowe's private dam.

Wholly independent of statute it is the duty of an owner of a dam "to so use and maintain the dam as not to unnecessarily endanger the safety or property of others" and if he neglected this duty the law makes him liable for the consequences. Monroe v. Lumber Co., 68 N.H. 85, 92. The mere collapse of the dam is not enough. Evidence that the dam was faulty, falling in disrepair or otherwise defective and that the defendant knew or ought to have known of the fault and carelessly failed in his duty to construct and maintain a proper dam is required to be shown. Wright v. Woodward, 79 N.H. 474.

The provisions of RSA 482:8 and 482:9 (Revised Laws, chapter 267, sections 20 and 21) appear to adequately protect the state if improper construction or maintenance is attempted in the future.

Very truly yours,

George F. Nelson  
Assistant Attorney General

GFN:L